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Docket Management Facility
USCG-2003-14273 -40
U.S. Department of Transportation, Room PL-401
400 Seventh Street SW
Washington D.C. 20590-0001

The Ocean
Conservancy



VIA FACSIMILE, 202-493-2251, AND U.S. MAIL

Re: Request for Public Comments, "Mandatory Ballast Water Management
Program for U.S. Waters," 68 Fed. Reg. 44691 (July 30, 2003)

To Whom It May Concern:

On behalf of The Ocean Conservancy (TOC) and its 150,000 members, we welcome the opportunity to provide comments on the above-described Federal Register notice. TOC has been active on the issue of ballast water management nationwide and are represented on several local and national task forces addressing this important problem.

The U.S. Coast Guard is seeking comments on a proposed mandatory ballast water management program for all vessels equipped with ballast tanks that are bound for ports or places within the U.S. and/or entering U.S. waters. We strongly support the Secretary of Transportation's intention, as stated in the Federal Register notice, to make the existing, voluntary ballast water management guidelines mandatory, as they have been since January 2000 under California state law.¹

While we generally support the intention of the proposed mandatory program, we do have several concerns about its specifics. First, we oppose the regulations' continued artificial distinction between waters of the Great Lakes/Hudson River and waters throughout the rest of the country. There is no meaningful scientific support for taking much less stringent action in all waters of the country, no matter how sensitive, for the only reason that they are not the Great Lakes or the Hudson River. So, for example, we believe that requirements associated with use of the "safety exemption" as described in 40 CFR § 151.2030 should be the same across the country, now that the Coast Guard is making the program mandatory across the country.

¹ Calif. Public Resources Code §§ 71200 *et seq.*

Specifically, we recommend that in addition to the changes proposed in the Federal Register notice, the Coast Guard should also revise Section 151.2030 to remove the distinction between vessels bound for the Great Lakes/Hudson River and those bound for other ports, and instead require that all regulated vessels, regardless of destination, "comply with the requirements of Sec. 151.1514 of subpart C [of part 151] (Ballast water management under extraordinary conditions)." Section 151.1514 requires vessels using the safety exemption to

employ another method of ballast water management listed in Sec. 151.1510, or request from the COTP permission to exchange the vessel's ballast water within an area agreed to by the COTP at the time of the request and must discharge [sic] the vessel's ballast water within that designated area.

Section 151.1510 lists the ballast water management options that are now also listed in the proposed new Section 151.2035(b). We ask that the above requirement be amended into Section 151.2030 and that references to both the current Section 151.1514 and the proposed Section 151.2035(b) be included in that new language, to make the alternative ballast water management requirements applicable to all vessels using the safety exemption.² In addition, as discussed below, we ask that the similar artificial distinction in the proposed Section 151.2037 be removed as well.

Second, we are concerned about the lack of comprehensive reporting requirements, which impede forward movement on an effective ballast water management program. In particular, we believe that the reporting requirements should be amended to include reporting of coastal traffic activity. The Programmatic Environmental Assessment (PEA) for the proposed rule states on pages 4-5 that "a discussion and evaluation of domestic ballast water transfer within the EEZ is not being addressed" in the rulemaking because "relatively little is known about the management and delivery of ballast water that originates and remains within the U.S. EEZ." The PEA concludes that "[t]his information gap precludes the formation of critical policy and management decisions." However, even though the PEA states that this information is essential, and that an essential program addressing coastal ship traffic was being jettisoned because of the lack of such information, the proposed rule surprisingly includes no requirement to collect this critical information. Instead, the proposed rule ignores the issue altogether and continues to require only information-gathering from vessels arriving from outside the EEZ. This information gap must be addressed, and can easily be redressed in the proposed rule.

We strongly recommend that the Coast Guard amend Section 151.2045(a) ("mandatory recordkeeping requirements") to remove "after operating beyond the EEZ." This change will provide the Coast Guard with the information it has already found is necessary to make "critical" program decisions with regard to coastal traffic. It will also allow the nation to catch up with states such as California, Oregon, and Washington,

² Parallel amendments would likely need to be made in proposed new Sections 151.2036 and 151.2037 as well.

who have been forced to enact laws regulating coastal traffic because of the slow pace of federal reforms and increasing damage to coastal resources caused by this vector.

Finally, related to the issue of coastal traffic, we have significant concerns with the "voyage concerns" element of the new proposed Section 151.2037, and its interaction with Section 151.2035(b) lists the mandatory ballast water management requirements for vessels "operating beyond the [EEZ]," and makes no mention of vessels skating close to the edge of the EEZ. However, Section 151.2037 inexplicably softens the edges of this hard and fast rule, stating that vessels that "cannot practicably" meet the mandatory requirements because they do not travel outside the EEZ "for a sufficient length of time" will be allowed to discharge an "operationally necessary" amount of ballast water – unless, of course, they are going to the Great Lakes or Hudson River.³

This provision is not implementable. None of the vague terms quoted above are defined, which means that the responsible agency will not be able to enforce them. It also is inconsistent with the clear line that Section 151.2035(b) draws at the EEZ. In addition, it discourages innovation by the affected regulated community, many of whom are cruise lines that could implement shipboard treatment technology fairly readily. Finally, the California state law at Public Resources Code §§ 71200 *et seq.* drew that bright line almost four years ago and has been implementing it, illustrating that it is not an unachievable goal for the Coast Guard. Accordingly, we strongly urge you to remove the "voyage concerns" language from Section 151.2037.

* * *

The IMO has found that invasive species are the fourth biggest threat to the health of the world's oceans. Aquatic invasives brought in through ships' ballast water have caused billions of dollars in damages to date. Strong federal leadership is needed to prevent further invasions. We appreciate the opportunity to provide these comments, which will provide reforms that are essential if the program is to move forward expeditiously and effectively. If you have any questions, please do not hesitate to call.

Sincerely,



Linda M. Sheehan
Director, Pacific Region Office

³ In this case, presumably, Section 151.1514 would be activated, and our comments above with regard to the artificial distinction between the Great Lakes/Hudson River and the nation's other coastal waters would apply.